

State of the Rule of Law in Europe in 2022

Reports from National
Human Rights Institutions

Liechtenstein



Liechtenstein

Liechtenstein Association of Human Rights

Impact of 2021 rule of law reporting

Follow-up by State authorities

The Council of Europe's Group of States against Corruption (GRECO) addressed various recommendations to Liechtenstein within the framework of the fourth round of evaluations, which serve to strengthen the rule of law (1). In order to implement these recommendations, the Parliament discussed the amendment of the Judges Appointment Act as well as the Public Prosecutor's Act in its 1st reading in its session from 1 - 3 December 2021. The second performance and final vote are expected in the spring of 2022. According to the Government's Report and Proposal No. 96/2021 to the Parliament (2), the proposed amendments include:

1. **Amendment of the Judicial Appointments Act:** All judicial positions, including part-time judges, are to be publicly advertised. The right of the judiciary to propose candidates for nomination shall be abolished. The role of the judiciary in the selection process for judges will be strengthened, and the right of the president of a court to be heard by a selection committee will be enshrined in law.
2. **Amendment of the Public Prosecutor's Act:** the concept of "integrity" is included in the Act as an employment requirement and the criteria of integrity are established as impeccability and incorruptibility. The examination of integrity is to be based on the criterion of "trustworthiness": candidates will be checked with regard to criminal records, current criminal proceedings, bankruptcy or insolvency proceedings or seizure in the last 5 years. Furthermore, a stronger protection against dismissal is to be ensured by specifying the current provision. Up until now, termination may only take place on the basis of significant operational or economic reasons and as ultima ratio. It is to be added that termination on the grounds of material operational or economic reasons will only be possible if it is not possible to reduce the position in a timely manner through natural attrition. In contrast to judges' positions, however, positions in the public prosecutor's office will remain terminable in principle.

3. **Further measures:** For the introduction of integrity requirements, the rules of procedure of the Judicial Selection Board for the selection of judges shall be adapted. Courts should adopt a judicial code of conduct together with explanatory comments and practical examples. The code should be publicized and monitored. Courts should establish training on integrity issues based on the above-mentioned judicial code of conduct and offer confidential counselling to all judges. The recent introduction of judicial registries and scientific services at the highest courts has contributed to the professionalization of the courts. Further professionalization measures (e.g., full-time employment of judges) are not envisaged. The Office of the Public Prosecutor should draw up a code of conduct for public prosecutors and make it available to the public. The code of conduct shall be supplemented with explanatory comments and practical examples. The Office of the Public Prosecutor shall provide regular training to public prosecutors on various topics related to ethics and integrity and allow public prosecutors to seek confidential advice on these topics.

References

- (1) GRECO report: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a0bd14>
- (2) Government's Report and Proposal No. 96/2021 to the Parliament: <https://bua.regierung.li/BuA/default.aspx?nr=96&year=2021&filter1=GRECO&backurl=modus%3dsearch%26filter1%3dvt%26filter2%3dGRECO&sh=501496822>

Impact on the Institution's work

In 2021, the Liechtenstein Association of Human Rights (LHRA) further strengthened and institutionalised its cooperation with civil society organisations. Agreements were concluded with certain NGOs to increase the effectiveness and long-term impact of efforts as regards the promotion of human rights and the strengthening of the rule of law.

In addition, the LHRA coordinates and moderates round tables on topics relevant to human rights and the rule of law (e.g., Round Table on Asylum, Round Table on Gender, Round Table on LGBTQ+, Round Table on Child Custody). Representatives of state authorities (including the judiciary) as well as representatives of civil society organisations take part in the roundtables. They provide a regular platform for communication between authorities and civil society. They contribute to capacity building among civil society organisations and to the development of an understanding of the problem among the various governmental and non-governmental actors. They enhance the elaboration of

concrete measures, e.g., legal proposals, practical improvements or awareness-raising activities.

References

- Liechtenstein Association of Human Rights - Annual Report 2020:
https://www.menschenrechte.li/wp-content/uploads/2019/01/JB_VMR_2020_web-1.pdf

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

LHRA is a non-accredited, associate member of ENNHRI since September 2019.

It was founded in December 2016 by 26 non-governmental organisations through the Liechtenstein Human Rights Association Act. It serves as an Ombuds body with a broad mandate to protect and promote human rights in Liechtenstein. The institution also acts as the Ombuds Office for Children and Young People.

ENNHRI will be supporting the Institution to seek accreditation by reference to the UN Paris Principles. The LHRA Board has decided to seek for accreditation in spring 2023.

Regulatory framework

LHRA has been able to continue acting in line with its mandate within the existing framework. LHRA is perceived and accepted by state authorities, stakeholders and general public as an independent body. The planned thematic activities and networking meetings were regularly carried out.

The national regulatory framework applicable to the LHRA has not changed since the ENNHRI 2021 rule of law report. The Liechtenstein's institution continues to function on a legislative basis. It has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals, awareness raising. Furthermore, the institution has the right to inspect documentation in individual cases, if the person concerned agrees (unlimited in the case of children, with the consent of the person concerned in the case of adults) and exercises the right to information from state authorities.

In view of the institution, its regulatory framework should be further strengthened. The introduction of a right of appeal by institutions such as LHRA would allow LHRA to carry on advocating even more effectively for access to justice for individuals. Under such

circumstances, LHRA would be able to take legal action in its own name and the person concerned would not have to expose himself.

References

- Liechtenstein Association of Human Rights Annual Report: https://www.menschenrechte.li/wp-content/uploads/2019/01/JB_VMR_2020_web-1.pdf

Enabling and safe space

The relevant state authorities have good awareness of the Liechtenstein Human Rights Association's mandate, independence and role.

Due to the detailed legal basis of the LHRA, the mandate, independence and role of the institution is well documented and clear. The competences and role of the LHRA are regularly discussed in detail during annual meetings with members of the government. In addition, once per term, there is an exchange with members of all national parties of the parliament. This also serves to communicate the role and competencies of the LHRA.

LHRA has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications. The LHRA is informed about all legislative projects of the government via newsletter and, since 2021, also about all upcoming public court hearings.

The addressees of the LHRA's recommendations are not legally obliged to provide a timely and reasoned reply and to respond to the institution's recommendations. However, the institution reports on the monitoring procedures it has carried out in its annual report, which is published. As a result, there is some public pressure to implement the LHRA's recommendations. So far, cooperation between the institution and state authorities has been satisfactory.

Measures necessary to protect and support the LHRA – the head of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place. Although there is no immunity or specific penal code provisions concerning the protection of the Institution, its head and staff, the LHRA stresses that such provisions do not seem necessary. On the other hand, the LHRA stresses the importance of ensuring that the Institution has sufficient financial resources to carry out its mandate.

NHRI's recommendations to national and regional authorities

Establishing a right of associational appeal for NHRIs would improve access to justice for individuals and strengthen the LHRA's position.

Designating LHRA as an independent monitoring body under the UN CRPD would strengthen its independence. However, this would require an appropriate amendment to the legal basis and additional government-funded resources for the LHRA.

The legal basis for NHRIs should be also amended by an obligation on the part of the addressees to examine the content of NHRI recommendations and respond to them within a set period of time.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The Liechtenstein institution has not identified any laws or practices negatively impacting on civic space and human rights defenders. It has acknowledged that freedom of assembly (political and religious gatherings) was guaranteed even throughout the Covid-19 pandemic.

References

- Frommelt, Christian; Schiess, Patricia (2021): Die Rolle des Landtages in der Coronapandemie. Kurzbericht. Liechtenstein-Institut, Gamprin-Bendern, Liechtenstein Institut: <https://www.liechtenstein-institut.li/publikationen/frommelt-christian-schiess-patricia-2021-die-rolle-des-landtages-der-coronapandemie-kurzbericht-liechtenstein-institut-gamprin-b>

NHRI's role in promoting and protecting civil society space and human rights defenders

As mentioned above, LHRA further strengthened and institutionalised its cooperation with civil society organizations last year. Agreements were concluded with certain NGOs to increase the effectiveness and long-term impact of efforts as regards the promotion of human rights and the strengthening of the rule of law. In addition, the LHRA coordinates and moderates round tables on topics relevant to human rights and the rule of law (e.g., Round Table on Asylum, Round Table on Gender, Round Table on LGBTQ+, Round Table on Child Custody). Representatives of state authorities (including the judiciary) as well as representatives of civil society organizations take part in the roundtables. They provide a regular platform for communication between authorities and civil society. They contribute to capacity building among civil society organisations and to the development of an understanding of the problem among the various governmental and non-governmental

actors. They can lead to the elaboration of concrete measures, e.g., legal proposals, practical improvements or awareness-raising activities.

Checks and balances

Trust amongst citizens and between citizens and the public administration

In view of LHRA, state authorities sufficiently foster a high level of trust amongst citizens and between citizens and public administration.

References

- <https://www.liechtenstein-institut.li/publikationen/frommelt-christian-milic-thomas-rochat-philippe-2021-landtagswahlen-2021-ergebnisse-der-wahlumfrage-bendern-beitraege-liechtenst> (page 73)

NHRIs as part of the system of checks and balances

In 2021, the LHRA contributed to the consultation on the abolition of stepchild adoption for same-sex couples (1). It also continuously monitored the government's measures to combat the Covid-19 pandemic and made recommendations regarding quarantine regulations and financial assistance for care migrants as well as contact restrictions for persons in detention. It further continued two formal monitoring procedures in 2021. One procedure was related to child protection and data protection in connection with digitization in schools and the second one to the examination of human rights compliance of the national disability insurance system. In the course of these procedures, information was obtained from authorities and interviews were held. In one procedure, the responsible member of the Government was contacted.

References

- (1) <https://www.menschenrechte.li/wp-content/uploads/2022/02/2021-12-10-StN-VNB-Abaenderung-PartG.pdf>

NHRI's recommendations to national and regional authorities

Civil society actors and specialized agencies should be involved at an early stage of law making process - if possible before the start of the law-drafting process.

Functioning of the justice system

LHRAs monitoring activities have not pointed to laws that restrict access to justice and/or effective judicial protection. However, the LHRA notices that not all structures and

processes within the national and communal administrations are as inclusive as necessary in order to provide all the possible support or communicate all the information necessary for individuals to fully enjoy access to justice or judicial protection. This is not necessarily intended but can result from a lack of communication or understanding by the authorities.

Role of the NHRI in contributing to the effective functioning of the justice system

The LHRA points to little public awareness of the prohibition of discrimination established in criminal law. There is also little case law under this criminal provision, which was revised in 2016 and greatly expanded in scope. Therefore, the LHRA is planning an awareness-raising campaign on the content of the criminal norm together with state authorities in 2022, as well as a review of case law under the criminal norm on discrimination.

Furthermore, there is no juvenile detention system in Liechtenstein. Detained minors are placed in foreign institutions due to the lack of appropriate correctional facilities. The role of children in the judiciary should be comprehensively examined in light of the UN Convention on the Rights of the Child.

Since the 2018 reform, the state prison is primarily a remand prison. However, administrative detentions are also performed (e.g., deportation detentions). It would have to be examined whether the framework conditions in the state prison also meet the requirements of administrative detention.

The LHRA formulated recommendations regarding juvenile detention system in its annual report and the prison authorities as well as police are well aware of this.

NHRI's recommendations to national and regional authorities

Legal foundations for the implementation of juvenile detention would have to be created. The framework conditions of the execution in the state prison would have to be checked for their suitability for all types of detention spent there (also administrative detention).

The COVID-19 measures applied in penitentiary institutions have to be proportionate - the general physical ban on contact for several months has to be lifted or made more proportionate and adequate.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Emergency regimes and related measures

The Parliament commissioned an independent scientific report on its role in the pandemic. The interdisciplinary report concludes that Parliament did function effectively throughout

the pandemic and was thus able to fulfil the functions assigned to a parliament in a system of parliamentary democracy. These include, in particular, the electoral, legislative, control and communication functions. Hence, according to the study, the Parliament maintained its effectiveness throughout the pandemic.

The LHRA assessed the government's COVID-19 measures as being, in general, proportionate. The measures were implemented on a legal basis and without restricting public consultation and democratic participation. Political assemblies were possible at all times, and the protective measures ordered for the assemblies were proportionate. In the summer of 2021, the Government commissioned an independent and critical study for attention to Parliament to review the legal basis and social impact of the pandemic. The results of the study are expected by the end of 2022.

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

In its opinion of 20 September 2021, the LHRA pointed to two aspects that it considered critical from a human rights perspective and addressed recommendations to relevant authorities, that were later implemented. Those two critical aspects were related to the loss of wages (lack of financial compensation) and entry restrictions (quarantines) that home-care migrants suffered from during the pandemic.

In addition, the COVID-19 regime applied in the state prison (i.e., a general physical contact ban) was considered by the LHRA to be disproportionate. COVID-19 measures introduced in the state prison have been prohibiting all detainees from physical contact with outsiders in order to prevent infection for almost two years – until they were lifted as of March 2022. The ban on contact also applied to families, regardless of testing or vaccination status and regardless of the type of detention. Recommendations to this effect were addressed to the Ministry of the Interior and the Ministry of Justice. A monitoring letter was issued to the Ministry of Justice as well.

References

- <https://www.liechtenstein-institut.li/publikationen/frommelt-christian-schiess-patricia-2021-die-rolle-des-landtages-der-coronapandemie-kurzbericht-liechtenstein-institut-gamprin-b>

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The LHRA will review the independent assessment of the national COVID-19 crisis management commissioned by the government with regard to their human rights impacts. The analysis is expected in summer 2022.

Other relevant developments or issues having an impact on the national rule of law environment

The LHRA perceives the access to information on the situation of vulnerable and marginalised groups as a particular challenge. Government agencies, as well as the LHRA, have little data on vulnerable or marginalised individuals or groups. It is often not known who these individuals are, what their living situation is, and what their needs are. A comprehensive research and long-term inclusion strategies would be needed.

NHRI's recommendations to national and regional authorities

The LHRA recommends State authorities to pursue comprehensive research and gather relevant data on vulnerable, marginalised groups and individuals as well as adopt long-term inclusion strategies.